

Local Enforcement Plan

Planning Services

DRAFT FOR CONSULTATION- September 2023



Summary

The Local Enforcement Plan exists to determine and structure the role of the planning enforcement service at Milton Keynes City Council. It should be read alongside adopted planning policies, such as [Plan:MK](#) and [neighbourhood plans](#), and national legislation¹ and policies². Throughout this Local Enforcement Plan are references and links to relevant legislation and policies that we use when determining if a breach of planning control has taken place and the options that we are able to consider if we believe formal action ought to be taken or not. The Enforcement tool kit and relevant information can be found at [Enforcement and post-permission matters \(www.gov.uk\)](https://www.gov.uk/government/collections/enforcement-and-post-permission-matters).

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¹ Primarily the Town and Country Planning Act 1990 (as amended) and the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), along with subordinate legislation such as The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), The Town and Country Planning (Use Classes) Order 1987 (as amended) and The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended).

² Primarily the National Planning Policy Framework (NPPF), Planning Practice Guidance (PPG).

Commonly used terms

When you report an alleged breach of planning control to us, we may use phrases such as ‘initial investigation’, ‘expedient’, ‘harm’, ‘discretionary’ and ‘material considerations’. These are explained below:

- **Initial investigation:** This is when we undertake various checks to establish if there is a breach of planning control. It is the first action undertaken by the planning enforcement officer before moving to consider the next steps, should a breach of planning control be established.
- **Expedient/expediency:** The term expedient or expediency relates to the ‘planning balance’ for instigating formal enforcement action. When assessing if formal action should be taken, we will ensure that the action is reasonable, proportionate and is in the public interest, so to achieve a meaningful outcome.
- **Harm:** We consider the planning harm associated with a breach of planning control. Planning harm is the term used to describe any negative impacts of a development.
- **Discretionary:** There is no legal requirement for us to take enforcement action against alleged breaches of planning control. Enforcement action requires planning judgement as to whether formal action is appropriate. In some cases, we may decide that formal action is not expedient, and an alternative approach is more appropriate, for example, by inviting a retrospective planning application, securing reversion of the works or cessation of the use, or no further action.
- **Material consideration:** A material planning consideration is one which is relevant to the matter in question (i.e., relevant to the development concerned, its scale and nature, and not a matter addressed by other regulatory or private controls). Whether a particular consideration is material or not will depend on the circumstances of the case. In general terms, planning is concerned with land use in the public interest, so the protection of purely private interests such as the impact on property value or loss of a private view cannot be considered material considerations.

1. Introduction

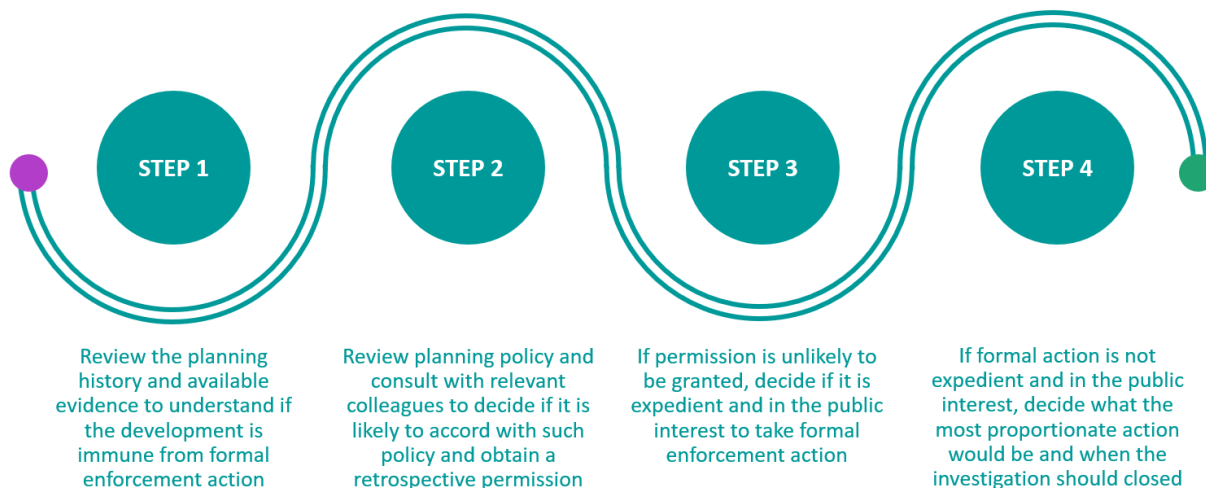
- 1.1 The primary role of planning enforcement is to investigate alleged breaches of planning control and bring about reasonable and proportionate remedial action where appropriate. Whilst most development is carried out with planning permission, there are instances where it is not. Quite often this can occur through not knowing when permission is required. Examples include a homeowner building an extension or a deviation from approved plans on a building site.
- 1.2 Pursuant to [national planning policy](#), the Local Enforcement Plan (LEP) sets out our procedures for proactively dealing with alleged breaches of planning control. It explains how our resources are put to best use dealing with breaches of planning control that cause harm to the built or natural environment and the people that use these places and spaces. It also sets out what stakeholders and interested parties can expect from the planning enforcement function.
- 1.3 Formal enforcement action is discretionary. National policy and guidance sets out that a local planning authority must only take formal action when [expedient and in the public interest](#) to do so. Any action must be proportionate to the breach of planning control to which it relates.
- 1.4 This LEP sets out how we can and will respond to breaches of planning control. Whilst each case will be considered on its merits, when determining the expediency of taking action the ability to take formal action as well as the policies of the development plan³ will be the key considerations. We will try to negotiate in the first instance as this is very often the quickest and most effective way to resolve problems. Where negotiation fails and there is development that results in unacceptable planning harm, we will consider taking formal action.
- 1.5 Our focus is to always find the most appropriate solution. In doing so we will consider whether planning enforcement is the most effective route or whether other legislation or agencies would be best suited to deal with the identified matter.

2. The planning enforcement approach

- 2.1 Planning Enforcement is a discretionary service within Milton Keynes City Council to investigate and address unauthorised development that causes unacceptable planning harm.
- 2.2 Development is defined as *“the carrying out of building, mining, engineering or other operations in, on, under or over land, or the making of any material change of use of any buildings or other land”*. Certain other activities, such as undertaking works to listed buildings without consent, demolition of buildings and enclosures, display of advertisements and works to protected trees also constitute development. The failure to comply with planning conditions set out in a planning permission is also a breach of planning control. More information is provided in the national [Planning Practice Guidance](#).
- 2.3 If the matter reported is not ‘development’, it cannot be a breach of planning control and we have no planning powers to take any action. We will, however, consider whether the matter can be more appropriately investigated by other departments or by another organisation, and further guidance on these matters is available on [our website](#).

³ The development plan comprises planning policy documents adopted by the Council, such as Plan:MK, and made neighbourhood plans. Further [guidance is available in Planning Practice Guidance](#).

- 2.4 If the matter reported is ‘development’, it may be that it falls within ‘[permitted development](#)’ or ‘[deemed consent](#)’ allowances⁴ and permission is not required. It may be that express permission or consent has already been granted⁵. If we identify the matter reported is already permitted, we will advise accordingly.
- 2.5 If the matter reported is development that does not benefit from permitted development rights, deemed consent or express permission, we will:



- 2.6 Our planning enforcement service also strives to raise awareness of planning controls across the city, which vary from one premises to another. The aim is to achieve a proactive service through working collaboratively with its stakeholders, such as ward councillors and town and parish councils.

3. How to report a planning enforcement complaint

- 3.1 Before reporting an alleged breach, it is best to first confirm whether it is a planning matter, as outlined in section 2, and, if so, whether the matter already benefits from permission. Where development is permitted, we cannot take any further action.
- 3.2 In most cases, a breach of planning control does not constitute a criminal offence. Therefore, it is rare that we can justify the taking of immediate action to require the breach to cease. The manner and speed at which we will seek to establish an intended course of action is set out in the service expectations outlined in Table 1 below, reflecting the significance of the breach.
- 3.3 To report an alleged breach of planning control, the [online reporting form](#) must be used. We will not accept planning enforcement enquiries by email, telephone or other methods. This enables complaints to be correctly triaged and prioritised, so to respond in an efficient and timely manner. Anonymous reports will not be investigated. Town or parish councils and ward councillors can report an alleged breach on behalf of a person who wishes to remain anonymous by completing the online form.

⁴ See also works to trees and hedgerows which are exempt from planning control: [Tree Preservation Orders \(www.gov.uk\)](#), [Trees in conservation areas \(www.gov.uk\)](#), and [Countryside hedgerows: protection and management \(www.gov.uk\)](#).

⁵ This can be checked by searching our Planning Register at [www.milton-keynes.gov.uk/publicaccess](#).

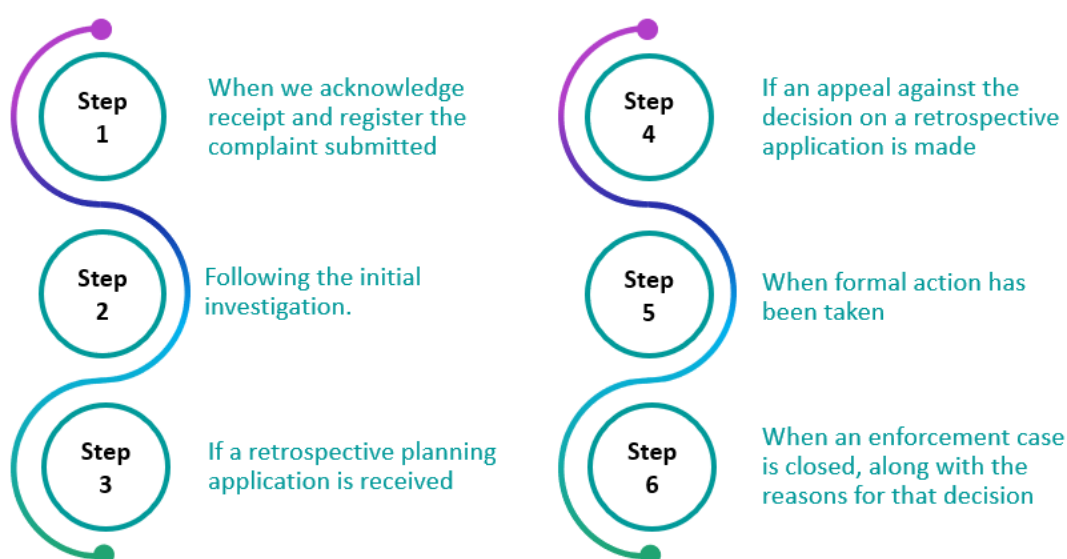
- 3.4 Multiple alleged breaches should be reported separately. For instance, an alleged breach of working hours at a site should be reported separately to an allegation that buildings are not sited or constructed in accordance with approved plans. This allows each breach to be investigated appropriately and assigned a suitable priority.

4. Dealing with a complaint about my building works or activities

- 4.1 We recognise that it can be stressful finding out that someone has made an allegation of a breach of planning control at your property. It is important that individuals or companies who are the subject of a planning enforcement investigation are treated fairly and given the opportunity to explain the circumstances from their perspective. The engagement of the owner and/or occupier of the property concerned can also be crucial in establishing the facts and often avoid wasted effort in pursuing formal action.
- 4.2 If you receive a visit or a letter from an enforcement officer explaining that a matter has been brought to our attention, then please do not ignore the issue. You should contact the enforcement officer as promptly as possible on the email address or telephone number provided.

5. How we deal with an alleged breach of planning control

- 5.1 We will deal with each alleged breach of planning control on a case-by-case basis. We have up to four years to act on certain types of breaches and ten years on others⁶, and our priorities take this into account. Only a very small percentage of breaches result in the need for immediate, formal action.
- 5.2 The person submitting an enforcement complaint will be kept informed of progress at various stages. The timescales for updates will vary as each case will vary from another, but we will aim to update at the following stages of the investigation:



⁶ 4 years for building or engineering works, or a material change of use to a dwelling; and 10 years for use of land/property or a breach of planning condition. See more at www.legislation.gov.uk/ukpga/1990/8/section/171B.

Receipt of enforcement complaint

- 5.3 Upon receipt, we will initially assess the complaint to establish the following:
- If the alleged breach of planning control would be better investigated by another service or organisation;
 - If the alleged breach of planning control has already been reported and is under investigation;
 - If the alleged breach has already been investigated and the case has been closed. Unless substantive new evidence has been provided, a new case will not be opened for investigation; and
 - If an alleged breach of planning control is likely to already benefit from permission. This includes checking the planning register, assessment of permitted development rights and any other relevant legislation.
- 5.4 If the evidence at this point confirms there is no breach of planning control, the case will be closed.
- 5.5 If we identify that the matter cannot be investigated by planning enforcement and/or should be investigated by another service area or organisation, we will refer the matter to them and close the case.

Initial investigation timeframes

- 5.6 Prioritisation of enforcement complaints indicates the range of time we would normally take to undertake the initial investigation. We will aim to complete this initial investigation within the timescales associated with the priorities set out in Table 1 below.




Priority 1	Priority 2	Priority 3
Within 2 working days	Within 5 -10 working days	Within 11 - 20 working days
<p>Irreversible harm caused or loss of irreplaceable assets, being:</p> <ul style="list-style-type: none"> ▪ Works to a listed building; ▪ Felling or pruning of trees covered by a Tree Preservation Order (TPO) or in a conservation area; ▪ Works taking place in breach of listed building, archaeological, tree protection or construction phase mitigation conditions; or ▪ Works or uses which have potential to cause significant and unacceptable impacts to highway safety or the amenities of the area. 	<p>Notable harm caused to the proper planning, public safety or the wider amenities of the area, being:</p> <ul style="list-style-type: none"> ▪ Certain works or uses taking place outside of hours limited by planning conditions; ▪ Works or uses which are likely to conflict with the strategy of the development plan; ▪ Works causing likely harm to the character and appearance of a conservation area; or ▪ Works taking place in breach of pre-commencement conditions not included in 'Priority 1'. 	<p>Breaches which do not result in significant and/or irreversible planning harm, being:</p> <ul style="list-style-type: none"> ▪ Breaches of planning conditions not included in 'Priority 1 or 2'; ▪ Works or uses not included in 'Priority 1 or 2', such as unauthorised householder works, erection of walls or fences, or use of agricultural land; ▪ Untidy land which adversely affects the amenity of the area; or ▪ The display of advertisements.

Table 1: prioritisation of enforcement complaints

- 5.7 The initial investigation will look to establish the facts of the matter, involving the capturing of further information through correspondence with the parties involved and a site visit where necessary. We will then update the complainant(s).
- 5.8 Following the initial investigation, the enforcement officer will then either recommend the case for closure or proceed to the next stage of the investigation. We may seek to capture more in-depth information by serving a [Planning Contravention Notice](#) (PCN) or by similar formal methods (see Appendix 1).



6. The possible outcomes of an investigation

- 6.1 The following provides a summary of what can be expected. More information on the [various types of formal action](#) is available in the Planning Practice Guidance. The complainant, ward and parish councillors will be notified upon the taking of any formal action.

<p>No breach of planning control</p> 	<p>Following a site visit or desktop study no breach of planning control is identified. This may be because:</p> <ul style="list-style-type: none"> ▪ the matters alleged have not yet occurred; ▪ the breach is not ‘development’ and therefore not a matter which falls under our control; ▪ the development in question benefits from permitted development rights or ‘deemed consent’, as the case may be); ▪ the development already has an express grant of planning permission; or ▪ following investigation, there is insufficient evidence to confirm the allegation.
<p>Immune from enforcement action due to passage of time</p> 	<p>The investigation reveals that whilst development has taken place, it has been substantially complete or taking place without material interruption for so long that we are unable to take formal action⁷.</p> <p>In cases relating to building operations or the material change of use to a dwellinghouse this period is 4 years, otherwise it is 10 years.</p> <p>Adverts and works to trees carry different restrictions on when formal action may be taken.</p>
<p>Negotiations take place to remedy the breach or regularise the situation</p> 	<p>Planning guidance advises, where possible, to negotiate resolutions so to avoid formal action. This can often be the quickest way of resolving an issue.</p> <p>Following the initial investigation, and on the basis that a breach is substantiated, the enforcement officer will decide upon the most appropriate steps towards resolving the breach. This response will consider the specific circumstances of the breach and consider the degree of planning harm caused, having regard to the development plan and material considerations.</p> <p>In vast majority of cases, we will first attempt to negotiate and mediate for the removal, reduction or cessation of unauthorised development. A reasonable period will be offered to achieve this compliance, which will vary on a case-by-case basis. This will be communicated as soon as practicable to the complainant.</p>

⁷ Given the provisions of [section 171B of the 1990 Act](#).

	<p>Where the investigation reveals that the development has a reasonable prospect of securing a retrospective planning permission, or that conditions are required to control the long-term use of the development, then a retrospective application will be invited. Officers will liaise with relevant stakeholders to inform this position. A reasonable period will normally be allowed for the preparation of supporting plans and documentation to accompany an application.</p> <p>Where the investigation reveals that the development is unlikely to obtain retrospective planning permission, we may move directly to formal action. However, the landowner/operator still has the right to make a retrospective application if they wish to do so.</p> <p>Where a retrospective application is received, the complainant will be notified so to allow for their participation in that process, should they so wish. They will not be directly notified through normal publicity requirements for an application unless they are an adjoining owner or occupier to the site concerned. Most enforcement investigations will be held in abeyance until a decision is made on that application.</p>
<p>There is a breach of planning control but it is not expedient to pursue</p> 	<p>Expediency is a test of whether the development is causing harm which has an unacceptable impact, either now or likely to in the future, having regard to the development plan and other material considerations. A judgement of expediency can include consideration of the appropriate use of public funds in pursuing the breach. If a breach is identified, it does not automatically mean that formal action will be taken.</p> <p>Should negotiation fail to secure a voluntary resolution or regularisation of the breach, we will consider whether it is in the public interest to pursue the matter to formal enforcement action. We will not usually take formal action against a breach of control that causes no harm. This accords with the national guidance and includes instances where there is a trivial or technical breach that causes no material harm.</p>
<p>Formal action is taken</p> 	<p>Where expedient, we will consider taking formal action. This will commonly involve the use of an enforcement notice, to which those with a legal interest in the land have a right of appeal. In some cases, a breach of condition notice may be appropriate.</p> <p>Formal action is considered when a retrospective planning application has been refused. This would indicate that the development results in an unacceptable harm.</p> <p>More significant action, such as the use of stop notices or injunctions will be rarely used, reserved for the most serious breaches of planning control. However, we will be prepared to use the most appropriate and effective power(s) that is/are appropriate to deal with an identified breach.</p>

<p>An appeal is lodged against an enforcement notice</p> 	<p>An appeal may be made to the Planning Inspectorate (PINS) against the serving of an enforcement notice. This must be done before it comes into effect and on up to 7 specified grounds.</p> <p>If an appeal is made the requirements of the notice are suspended until the appeal is decided. Enforcement appeals can sometimes take up to a year or longer to be determined.</p> <p>Where an appeal is allowed the enforcement notice is quashed and its requirements no longer apply. If an appeal is dismissed, the notice will take effect from the date of the appeal decision. The Inspector may decide to alter or amend a notice provided that no party is prejudiced by the changes. We will then monitor for compliance with the notice, which remains in force even after compliance has been secured.</p>
<p>Prosecution for failure to comply with an enforcement notice</p> 	<p>Legal action, such as a prosecution, can only be taken if an individual fails to comply with the requirements of an enforcement notice. The expediency and appropriateness of prosecution is assessed by our legal services team, based upon the evidence held and will only be taken where the evidential and public interest tests have been met.</p>

7. Service Expectations

- 7.1 The Council will provide an open, proportionate, consistent and helpful service, in line with the principles of good enforcement practice as set out in our [Planning Customer Charter](#) and [national guidance](#).

Openness

- 7.2 Due to the sensitive nature of allegations made and the need for the Council to ensure its ability to effectively resolve a breach of planning control, including the taking of formal action, we will not normally disclose correspondence on an enforcement case where the matter is still under investigation or is being monitored for compliance with an enforcement notice. Requests for disclosure of such information will normally be rejected under sections 30, 31, 32, 36, 39, 40(2), 41 and/or 42 the [Freedom of Information Act](#) (FOIA) and/or regulations 12(5)(b) to 12(5)(g) of the [Environmental Information Regulations](#) (EIR).
- 7.3 Requests for disclosure of information relating to a completed investigation, and where any breach of planning control has been resolved, will be considered with the above provisions in mind, noting that we will still redact/remove personal and sensitive data, and any information which may undermine the effective operation of enforcement powers within Milton Keynes.
- 7.4 Where technology allows, we will publish delegated officer reports summarising and explaining the reasons for taking formal action or the closure of a case.

Confidentiality

- 7.5 The identity of those raising a complaint of an alleged breach of planning control (excluding ward councillors and parish and town councils) is kept confidential. This is so to ensure public

trust and confidence in being able to raise concerns regarding planning control without fear of retribution.

- 7.6 Where we need to pass the contact details of the complainant to other services within the Council or to other organisations, we will ensure that information relating to individuals and businesses is treated carefully, in accordance with the [Data Protection Act](#).
- 7.7 We will not actively disclose correspondence or detailed information on an investigation to a third party but will summarise what action (if any) we have taken and our response. Where a matter proceeds to formal action, the relevant enforcement or other notice will be published on the planning register.

Proportionality

- 7.8 We will deal with each case on a priority basis, as set out in Table 1. These priorities recognise that it is those breaches causing irreversible harm and irrevocable loss which command an immediate response, as well as swift formal action to curtail the breach.
- 7.9 The priorities also recognise that the majority of breaches are minor in nature and occur because of a lack of knowledge of the planning rules, and that most are commonly resolved through mediation or regularisation. Planning enforcement action will be considerate to the intent and context of the owner/occupier and the development concerned. All relevant circumstances for each case will be considered against the development plan and other material planning considerations.
- 7.10 Our performance against these priorities is monitored quarterly with this and further analysis reported to Planning Committee twice annually.

Resources

- 7.11 To recognise the extent of resources appropriate to the operation of a discretionary planning enforcement function, the Council will apply the prioritisation of complaints as set out in Table 1. Furthermore, it will seek to record the financial cost of carrying out this function, including also capturing the value of the service through retrospective applications and successful prosecutions, etc.
- 7.12 We will also provide training to ward and town and parish councillors to broaden their knowledge of the planning enforcement function, including the limitations of the service and its powers to take formal action. Informal enforcement sessions for ward councillors and town/parish council clerks are also regularly held. We will also look, where resources allow, to enhance the content available at [on our website](#) to inform the general public on the need for planning permission.

Consistency

- 7.13 We will seek to effectively manage enforcement cases and apply standard procedures and approaches, making the best use of technology and electronic communications. Discretion and professional judgement are required in all enforcement matters, so we will adhere to national guidance, this LEP and adopted procedures to achieve, as far as practicable, a fair and equitable outcome.
- 7.14 We will keep reliable and up-to-date records of all planning enforcement investigations and retain these in accordance with data retention schedules.

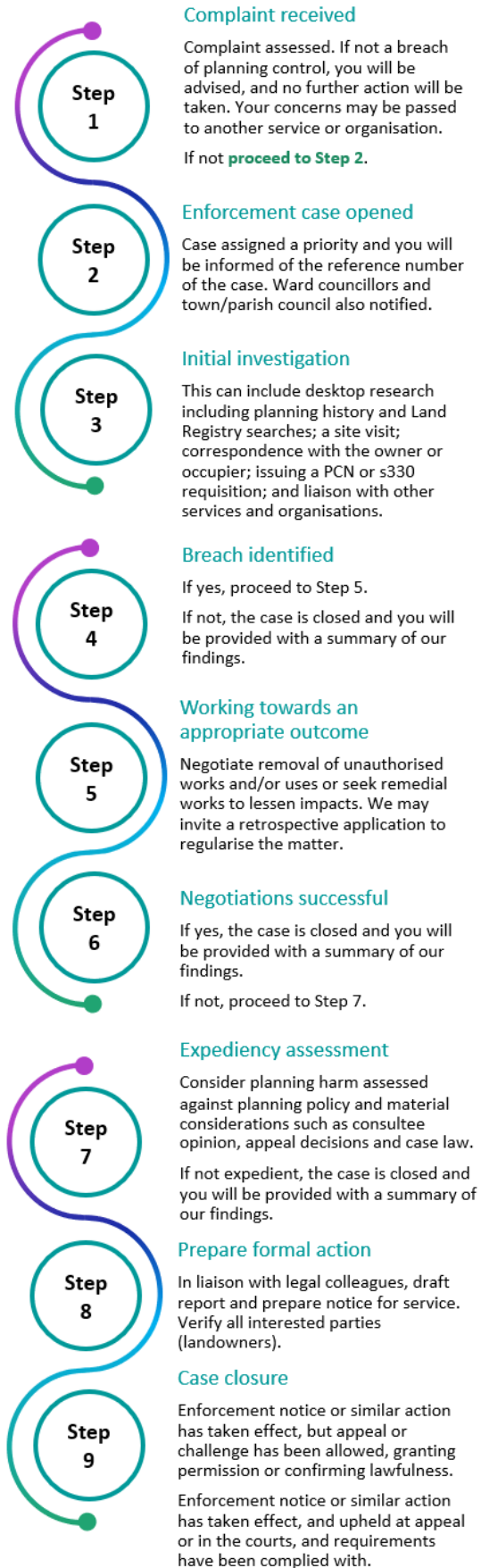
Helpfulness

- 7.15 We will notify town and parish councils and ward councillors when an enforcement investigation is commenced in their parish/ward. The outcome of the case will also be communicated along with the reasons for the decision.
- 7.16 Complainants will be kept informed of progress as shown in section 5.

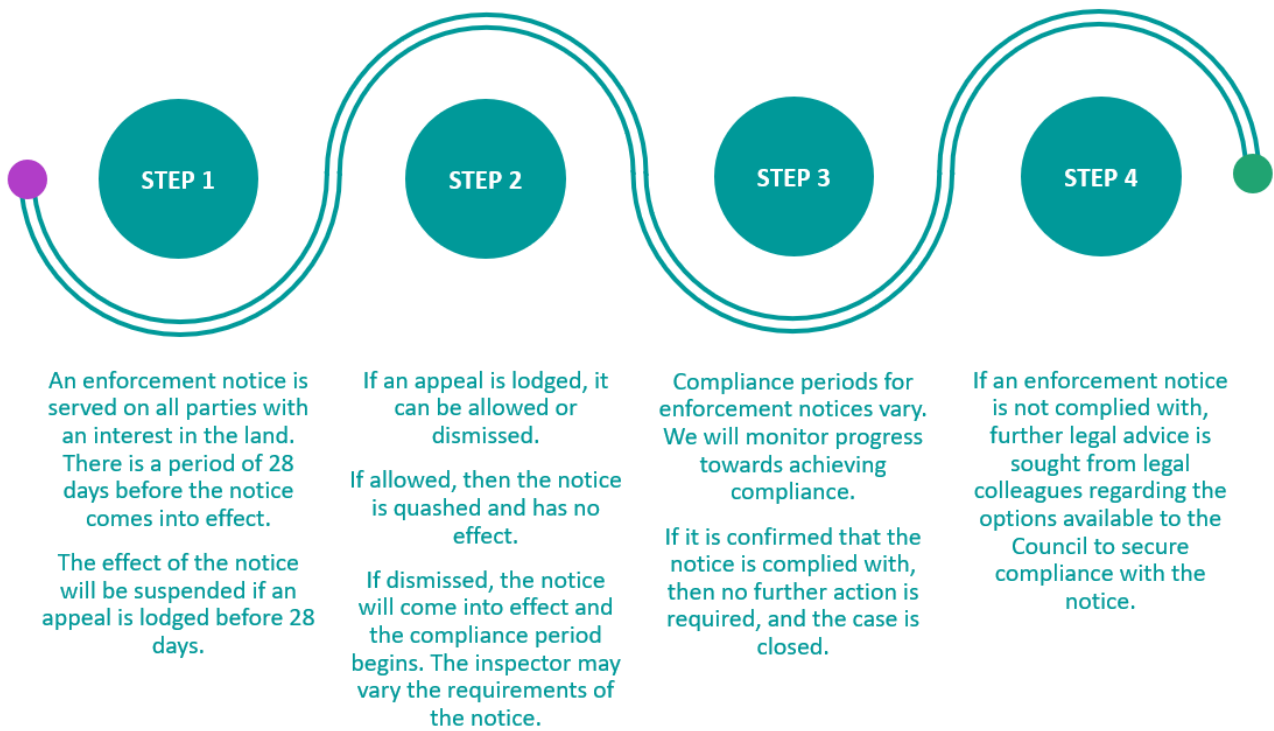
Disputes

- 7.17 If you are unhappy with how an enforcement case has been investigated, you are able to make a formal complaint by completing the online form at www.milton-keynes.gov.uk/complaints where details of the complaints procedure can also be found. Please note that the complaints procedure does not allow for the review of professional judgement exercised in deciding the outcome of an investigation.

Appendix 1: Summary of the Enforcement investigation process



Appendix 2: What happens after an Enforcement Notice is served?



Local Enforcement Plan 2023

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